

10/810,944

MS307029.01/MSFTP637US

REMARKS

Claims 1-21 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I. Rejection of Claims 1-9 and 16-20 Under 35 U.S.C. §102(b)

Claims 1-9 and 16-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Chen *et al.* (US 5,812,780). Withdrawal of this rejection is requested for at least the following reasons. Chen *et al.* does not disclose or suggest each and every aspect recited in the subject claims.

A single prior art reference anticipates a patent claim only if it *expressly or inherently describes each and every limitation set forth in the patent claim*. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The *identical invention must be shown in as complete detail as is contained in the ... claim*. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Applicants' claimed subject matter relates to systems and methods of load testing a server, wherein user characteristics can be adjusted dynamically during a test period of the server, based upon weightings defined in a user profile. Such dynamic adjustment enables a distribution of simulated user characteristics as a percentage of total requests, as opposed to as a percentage of total users. The user characteristics can include type of user activities on a web page, browser characteristics, network connections, various client/server hardware/software configurations and the like. To this end, independent claims 1 and 16 recite similar aspects namely: *a dynamic load adjustor component that dynamically adjusts user characteristics based at least in part on a browser type*. Chen *et al.* does not disclose or suggest these features of the claimed subject matter.

Chen *et al.* relates to systems and methods, and computer program products for the provision of realistic load conditions on a server application by simulating the behavior of multiple users operating client software. As the Examiner clearly

10/810,944

MS307029.01/MSFTP637US

acknowledges, *Chen et al.* does not disclose dynamically adjusting user characteristics based at least in part on a browser type. Nevertheless, the Examiner conjectures, since the cited document discloses: (i) that actual user behavior is modeled so that accurate determinations can be made as to the number of users a given server application can adequately support; (ii) that the program code running on a CPU and having access to client profile information constitutes means to manage and control the generation, scheduling and execution of tasks; and (iii) that the communications network physically connecting the LoadSim client to the Exchange Server with associated network protocols and Exchange application protocols forms an output means to communicate tasks to the Exchange servers and an input means to receive responses to those tasks from the Exchange Server, that the cited document thus provides dynamically adjusting user characteristics based at least in part on a browser type. Applicants' representative respectfully disagrees. While, the cited document does provide for the modeling of actual user behavior to facilitate accurate determinations as to the number of users a given server application can adequately support, a means to manage and control the generation, scheduling and execution of tasks, and that the communications network that physically connects the LoadSim client and the Exchange Server with associated network protocols and Exchange application protocols provides both an output means to communicate tasks to Exchange servers and an input means to receive responses to those tasks from the Exchange Server, the cited document however is silent regarding the utilization of a browser type, let alone utilization of a browser type in order to dynamically adjust user characteristics. Consequently, in view of the fact that *Chen et al.* does not disclose or suggest the employment of browsers, or the utilization of a browser type to dynamically adjust user characteristics, it is submitted that the cited document and the claimed subject matter are patently distinguishable.

Moreover, the standard by which anticipation is to be measured is *strict identity* between the cited document and the invention as claimed, not mere equivalence or similarity. *See, Richardson* at 9 USPQ2d 1913, 1920. This means that in order to establish anticipation under 35 U.S.C. §102, the single document cited must not only expressly or inherently describe each and every limitation set forth in the patent claim, but also the identical invention must be shown in as complete detail as is contained in the

10/810,944

MS307029.01/MSFTP637US

claim. The fact that Chen *et al.* does not disclose the employment of browsers, or browser types, in any form, let alone the utilization of a browser type to dynamically adjust user characteristics based at least in part on the browser type, would lead one of ordinary skill to believe that the cited document in the final analysis, does not provide an invention identical to that recited in the subject claims. Accordingly, withdrawal of this rejection with respect to independent claims 1 and 16 (and associated dependent claims) is requested.

II. Rejection of Claims 10-15 and 21 Under 35 U.S.C. §102(e)

Claims 10-15 and 21 stand rejected under 35 U.S.C. §102(e) as being anticipated by Malmeskog *et al.* (US 6,721,686). This rejection should be withdrawn for at least the following reasons. Malmeskog *et al.* fails to disclose or suggest all limitations set forth in the subject claims.

Independent claims 10 and 21 recite: *the plurality of users dynamically adjusted based on predetermined weightings of a user profile having weighted characteristics that comprises at least a browser type therein and means for dynamically adjusting user characteristics while loading the server; and means for distributing the user characteristics as a percentage of total requests sent to the server, each user characteristic including at least a browser type*, respectively. Malmeskog *et al.* does not disclose or suggest these features of the claimed subject matter.

Malmeskog *et al.* relates to a server load testing and measurement system, and in particular discloses a server load test system and method for generating an artificial load on a Web server and evaluating the performance of the Web server. The Examiner acknowledges the cited document does not disclose or suggest that weighted characteristics can include at least a browser type, but nevertheless maintains that it is known that different types of browsers such as Internet Explorer or Mozilla provide a method for client side JavaScript to make HTTP requests. (See Final Office Action dated March 23, 2006, page 8). While it may be true, as the Examiner asserts, that different browser types provide methods to make HTTP requests, it is nonetheless applicants' representative's contention that since Malmeskog *et al.* makes no mention of browser types whatsoever that the cited document cannot permissibly be viewed as dynamically

10/810,944MS307029.01/MSFTP637US

adjusting the plurality of users based on predetermined weightings of a user profile having weighted characteristics that comprise at least a browser type.

Additionally, as stated *supra*, the standard by which anticipation is to be measured is *strict identity* between the cited document and the invention as claimed, not mere equivalence or similarity. *See, Richardson* at 9 USPQ2d 1913, 1920. This means that in order to establish anticipation under 35 U.S.C. §102, the single document cited must not only expressly or inherently describe each and every limitation set forth in the patent claim, but also the identical invention must be shown in as complete detail as is contained in the claim. The fact that Malmeskog *et al.* does not disclose utilization of browsers, let alone browser types employed to dynamically adjust the plurality of users based on predetermined weightings of a user profile having weighted characteristics that include at least a browser type, leads one to the conclusion that the cited document does not provide an invention identical to that recited in the subject claims. Accordingly, in view of at least the foregoing, it is respectfully requested that the rejection of independent claims 10 and 21 (and claims that depend there from) should be withdrawn.

10/810,944

MS307029.01/MSFTP637US

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP637US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

AMIN & TUROCY, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731